

House File 665 - Introduced

HOUSE FILE 665
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO HSB 225)

A BILL FOR

1 An Act modifying provisions applicable to certain service
2 contract providers regulated by the commissioner of
3 insurance, providing fees, making penalties applicable,
4 making an appropriation, and including effective date
5 provisions.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 523C.1, Code 2019, is amended to read as
2 follows:

3 **523C.1 Definitions.**

4 As used in [this chapter](#), unless the context otherwise
5 requires:

6 1. *"Commissioner"* means the commissioner of insurance.

7 ~~2. *"Custodial account"* means an account established by
8 agreement between a licensed service company and a custodian
9 under [section 523C.5](#).~~

10 ~~3. *"Custodial agreement"* means an agreement entered into
11 between a licensed service company and a custodian under
12 [section 523C.5](#).~~

13 ~~4. *"Custodian"* means an institution meeting the requirements
14 established by the commissioner which institution has entered
15 into a custodial agreement or reserve account agreement with a
16 licensed service company.~~

17 ~~5. *"Depository"* means an institution designated by the
18 commissioner as an authorized custodian for purposes of
19 [sections 523C.5](#) and [523C.11](#).~~

20 ~~6. 2. *"Licensed service company"* means a service company
21 which is licensed by the commissioner pursuant to [this chapter](#).~~

22 3. *"Maintenance agreement"* means a contract of any duration
23 that provides for scheduled maintenance to property.

24 4. *"Motor vehicle"* means any self-propelled vehicle subject
25 to registration under chapter 321.

26 5. *"Motor vehicle manufacturer"* means any of the following:

27 a. A person who manufactures or produces motor vehicles
28 and sells the motor vehicles under the person's trade name or
29 label.

30 b. A person who is a wholly owned subsidiary of any person
31 who manufactures or produces motor vehicles.

32 c. A person who holds a one hundred percent ownership
33 interest in another person who manufactures or produces motor
34 vehicles.

35 d. A person who does not manufacture or produce motor

1 vehicles, but for which motor vehicles are sold under the
2 person's trade name or label.

3 e. A person who manufactures or produces motor vehicles,
4 but the motor vehicles are sold under the trade name or label
5 of another person.

6 f. A person who does not manufacture or produce motor
7 vehicles, but who licenses the use of the person's trade name
8 or label to another person pursuant to a written contract, who
9 then sells motor vehicles under the trade name or label of the
10 licensor.

11 6. "Motor vehicle service contract" means a contract or
12 agreement given for consideration over and above the lease
13 or purchase price of a new or used motor vehicle having a
14 gross vehicle weight rating of less than sixteen thousand
15 pounds, that undertakes to perform the repair, replacement,
16 or maintenance of the motor vehicle, or indemnification for
17 such repair, replacement, or maintenance, for the operation
18 or structural failure of the motor vehicle due to a defect
19 in materials, workmanship, or normal wear and tear, with or
20 without additional provisions for the incidental payment
21 of indemnity under limited circumstances, including but
22 not limited to motor vehicle towing, rental, emergency road
23 service, and road hazard protection. "Motor vehicle service
24 contract" also includes a contract or agreement sold for
25 separate consideration for a specific duration that provides
26 for any of the following services or products:

27 a. The repair or replacement of motor vehicle tires or
28 wheels that are damaged as a result of contact with road
29 hazards, including but not limited to potholes, rocks, wood
30 debris, metal parts, glass, plastic, curbs, or composite
31 scraps.

32 b. The removal of dents or creases on a motor vehicle
33 under a process that does not use paint or affect the existing
34 paint finish, and without sanding, bonding, or replacing motor
35 vehicle body panels.

1 c. The repair or replacement of motor vehicle windshields
2 that are damaged as a result of contact with road hazards.

3 d. The replacement of motor vehicle keys or key fobs in the
4 event that such device becomes inoperable, lost, or stolen.

5 e. Any other service or product approved by the
6 commissioner.

7 7. "Premium" means the consideration paid to an insurer for
8 a reimbursement insurance policy.

9 ~~7. 8. "Record" means the same as defined in section 516E.1~~
10 information stored or preserved in any medium, including in
11 an electronic or paper format. A "record" includes but is
12 not limited to documents, books, publications, accounts,
13 correspondence, memoranda, agreements, computer files, film,
14 microfilm, photographs, and audio or visual tapes.

15 9. "Reimbursement insurance policy" means a contractual
16 liability insurance policy issued to a service company that
17 either provides reimbursement to a service company under the
18 terms of insured service contracts issued or sold by the
19 service company or, in the event of nonperformance by the
20 service company, pays, on behalf of the service company, all
21 covered contractual obligations incurred by the service company
22 under the terms of the insured service contracts issued or sold
23 by the service company.

24 ~~8. "Reserve account agreement" means an agreement entered~~
25 ~~into between a licensed service company and a depository under~~
26 ~~section 523C.11.~~

27 ~~9. 10. "Residential service contract" means a contract or~~
28 ~~agreement between a residential customer and a service company~~
29 ~~which undertakes, for a predetermined fee and for a specified~~
30 ~~any period of time, to service, maintain, repair, or replace,~~
31 ~~or indemnify expenses for all or any part of the operational or~~
32 ~~structural components, appliances, or electrical, mechanical,~~
33 ~~plumbing, heating, cooling, or air-conditioning systems of~~
34 ~~residential property containing not more than four dwelling~~
35 ~~units in the state which fails due to normal wear or tear or~~

1 inherent defect. "Residential service contract" also includes
2 a contract which provides for the service, repair, replacement,
3 or maintenance of property for damage resulting from power
4 surges, roof leakage, and accidental damage from repair work.

5 ~~10.~~ 12. "Service company" means a person who issues and
6 performs, or arranges to perform, is contractually obligated to
7 perform services pursuant to a motor vehicle service contract
8 or residential service contract.

9 13. "Service contract" means a motor vehicle service
10 contract or residential service contract.

11 14. "Warranty" means a statement made solely by the
12 manufacturer, importer, or seller of property or services
13 without consideration, that is not negotiated or separated from
14 the sale of the product and is incidental to the sale of the
15 product, and that guarantees indemnity for defective parts,
16 mechanical or electrical breakdown, and labor or other remedial
17 measures, such as repair or replacement of the property or
18 repetition of services.

19 Sec. 2. Section 523C.2, Code 2019, is amended to read as
20 follows:

21 **523C.2 License required.**

22 1. A person shall not issue a, offer for sale, or sell a
23 motor vehicle service contract or residential service contract
24 or undertake or arrange to perform services pursuant to a
25 residential service contract in this state unless the person
26 is a corporation or other form of organization approved by the
27 commissioner by rule and is a licensed as a service company
28 under this chapter.

29 2. The licensure requirements of this chapter shall not
30 apply to any person who provides support services or works
31 under the direction of a licensed service company in connection
32 with the issuance, offer for sale, or sale of a service
33 contract in this state, including but not limited to a person
34 who provides marketing, administrative, or technical support.

35 Sec. 3. Section 523C.3, Code 2019, is amended to read as

1 follows:

2 **523C.3 Application for license.**

3 1. Application for a license as a service company shall
4 be made to and filed with the commissioner on forms approved
5 by the commissioner and shall include all of the following
6 information:

7 a. The name and principal address of the applicant.

8 b. The state of incorporation of the applicant.

9 c. The name and address of the applicant's registered agent
10 for service of process within Iowa.

11 d. A certificate of good standing for the applicant issued
12 by the secretary of state and dated not more than thirty days
13 prior to the date of the application.

14 e. Evidence of compliance with section 523C.5.

15 f. A copy of each motor vehicle service contract form to be
16 used or issued in this state, if applicable.

17 g. A copy of each residential service contract form to be
18 used or issued in this state, if applicable.

19 2. The application shall be accompanied by all of the
20 following:

21 ~~a. A certificate of good standing for the applicant issued~~
22 ~~by the secretary of state and dated not more than thirty days~~
23 ~~prior to the date of the application.~~

24 ~~b. A surety bond, a copy of the receipt from the treasurer~~
25 ~~of state that a cash deposit has been made, or a copy of a~~
26 ~~eustodial agreement as provided in [section 523C.5](#).~~

27 ~~c. A copy of the most recent financial statement, including~~
28 ~~balance sheets and related statements of income, of the~~
29 ~~applicant, prepared in accordance with generally accepted~~
30 ~~accounting principles, audited by a certified public accountant~~
31 ~~and dated not more than twelve months prior to the date of the~~
32 ~~application.~~

33 ~~d. An affidavit of an authorized officer of the service~~
34 ~~company stating the number of contracts issued by the service~~
35 ~~company in the preceding calendar year, and stating that the~~

1 ~~net worth of the service company satisfies the requirements of~~
2 ~~section 523C.6.~~

3 ~~e.~~ a. A license fee in the amount of ~~two~~ five hundred fifty
4 dollars.

5 b. If applicable, a fee in the amount of fifty dollars
6 for each motor vehicle service contract form submitted in an
7 application as provided in subsection 1, paragraph "f".

8 3. If the application contains the required information and
9 is accompanied by the items set forth in subsection 2, ~~and if~~
10 ~~the net worth requirements of section 523C.6 are satisfied, as~~
11 ~~evidenced by the audited financial statements,~~ the commissioner
12 shall issue the license. If the form of application is not
13 properly completed or if the required accompanying documents
14 are not furnished or in proper form, the commissioner shall
15 not issue the license and shall give the applicant written
16 notice of the grounds for not issuing the license. A notice
17 of license denial shall be accompanied by a refund of fifty
18 percent of the fee submitted with the application.

19 4. Fees collected under this section shall be deposited as
20 provided in section 505.7 523C.24.

21 Sec. 4. Section 523C.4, Code 2019, is amended to read as
22 follows:

23 **523C.4 License expiration and renewal.**

24 1. Each license issued under this chapter shall expire
25 ~~on June 30 next~~ be valid for a period of one year and shall
26 be renewed by August 31 of each year following the date of
27 issuance. ~~If the service company maintains in force the surety~~
28 ~~bond described in section 523C.5 and if its license is not~~
29 ~~subject to or under suspension or revocation under section~~
30 ~~523C.9, its license shall be renewed by the commissioner upon~~
31 ~~receipt by the commissioner on or before the expiration date~~
32 ~~of a renewal application accompanied by the items required by~~
33 section 523C.3, subsection 2, paragraphs "b", "c", "d", and "e",
34 ~~and section 523C.15.~~

35 2. An application for renewal shall include the information

1 required for an initial license as described in section 523C.3,
2 subsection 1.

3 3. The renewal application shall be accompanied by all of
4 the following:

5 a. A license renewal fee in the amount of five hundred
6 dollars.

7 b. If applicable, a fee in the amount of three percent of
8 the aggregate amount of payments the licensee received for the
9 sale or issuance of residential service contracts in this state
10 during the preceding fiscal year, provided that such fee shall
11 be no less than one hundred dollars and no greater than fifty
12 thousand dollars.

13 c. If applicable, a fee in the amount of fifty dollars
14 for each motor vehicle service contract form submitted in a
15 renewal application as provided in section 523C.3, subsection
16 1, paragraph "f".

17 d. Information regarding the number of motor vehicle service
18 contracts or residential service contracts issued during the
19 preceding fiscal year, the number canceled or expired during
20 the preceding fiscal year, the number in effect at the end of
21 the preceding fiscal year, and the amount of service contract
22 fees received during the preceding fiscal year.

23 4. If the commissioner denies renewal of the license, the
24 denial shall be in writing setting forth the grounds for denial
25 and shall be accompanied by a refund of fifty percent of the
26 license renewal fee.

27 5. In addition to the annual license renewal requirements
28 as provided in this section, a licensee shall report to the
29 commissioner any material change in information submitted by
30 the licensee in its initial license application which has
31 not been reported to the commissioner, including a change in
32 contact information, a change in ownership, or any other change
33 which substantially affects the licensee's operations in this
34 state.

35 Sec. 5. Section 523C.5, Code 2019, is amended by striking

1 the section and inserting in lieu thereof the following:

2 **523C.5 Financial responsibility — demonstration**
3 **requirements.**

4 In order to assure the faithful performance of a service
5 company's obligations to its contract holders in this state,
6 a licensed service company shall demonstrate financial
7 responsibility to the commissioner by satisfying one of the
8 following, as evidenced by the service company:

9 1. Insuring all motor vehicle service contracts and
10 residential service contracts offered for sale in this state
11 under a reimbursement insurance policy that complies with
12 section 523C.6.

13 2. Doing both of the following:

14 a. Maintaining a funded reserve account for the service
15 company's obligations under any issued and outstanding service
16 contracts in this state, in an amount no less than forty
17 percent of gross consideration received, less claims paid, for
18 the sale of all service contracts issued and in force in this
19 state. The reserve account shall be subject to examination and
20 review by the commissioner.

21 b. Placing in trust with the commissioner a financial
22 security deposit in an amount no less than five percent of
23 the gross consideration received by the service company,
24 less claims paid, for the sale of all motor vehicle service
25 contracts and residential service contracts issued and in force
26 in this state, but not less than twenty-five thousand dollars,
27 consisting of one of the following:

28 (1) Cash.

29 (2) Securities of the type eligible for deposit by insurers
30 authorized to transact business in this state.

31 (3) Certificates of deposit.

32 (4) A surety bond issued by an authorized surety company.

33 (5) Another form of security as prescribed by the
34 commissioner by rule.

35 3. Doing both of the following:

1 *a.* Maintaining, on its own or together with a parent
2 company, a minimum net worth or stockholders' equity of one
3 hundred million dollars or more.

4 *b.* Upon request from the commissioner, providing either:

5 (1) A copy of the service company's financial statements.

6 (2) If the service company's financial statements are
7 consolidated with those of its parent company, a copy of the
8 parent company's most recent form 10-K or form 20-F filed with
9 the federal securities and exchange commission within the last
10 calendar year, or if the parent company does not file with
11 the federal securities and exchange commission, a copy of the
12 parent company's audited financial statements showing a net
13 worth of at least one hundred million dollars. If the service
14 company's financial statements are consolidated with those of
15 its parent company, the service company shall also provide a
16 copy of a written agreement by the parent company guaranteeing
17 the obligations of the service company under motor vehicle
18 service contracts and residential service contracts issued and
19 outstanding by the service company in this state.

20 Sec. 6. Section 523C.6, Code 2019, is amended by striking
21 the section and inserting in lieu thereof the following:

22 **523C.6 Reimbursement insurance policy requirements — insurer**
23 **qualifications.**

24 1. *Requirements.* A reimbursement insurance policy insuring
25 a motor vehicle service contract or residential service
26 contract issued, sold, or offered for sale in this state shall
27 provide for all of the following:

28 *a.* The reimbursement insurance policy shall obligate the
29 insurer that issued such policy to reimburse or pay on behalf
30 of the service company any covered sums that the service
31 company is legally obligated to pay according to the terms of
32 the contract or, in the event of nonperformance by the service
33 company, provide the service which the service company is
34 legally obligated to perform according to the terms of the
35 service contract, which shall be conspicuously stated in the

1 reimbursement insurance policy.

2 *b.* The reimbursement insurance policy shall entitle a
3 service contract holder to make a claim directly against the
4 insurance policy if the service company fails to pay or provide
5 service on a claim within sixty days after proof of loss is
6 filed with the service company.

7 *c.* The insurer that issued a reimbursement insurance policy
8 shall be deemed to have received the premiums upon the payment
9 of the total purchase price of the service contract by the
10 service contract holder.

11 2. *Termination.* As applicable, an insurer that issued a
12 reimbursement insurance policy shall not terminate the policy
13 unless a written notice has been received by the commissioner
14 and by each applicable service company. The notice shall
15 fix the date of termination at a date no earlier than ten
16 days after receipt of the notice by the commissioner. The
17 termination of a reimbursement insurance policy shall not
18 reduce the issuer's responsibility for a service contract
19 issued by an insured service company prior to the date of
20 termination.

21 3. *Indemnification or subrogation.* This section does
22 not prevent or limit the right of an insurer that issued a
23 reimbursement insurance policy to seek indemnification from or
24 subrogation against a service company if the insurer pays or
25 is obligated to pay a service contract holder sums that the
26 service company was obligated to pay pursuant to the provisions
27 of a service contract or pursuant to a contractual agreement.

28 4. *Premium tax liability.* Payments for the purchase price
29 of a service contract by a service contract holder shall be
30 exempt from premium tax. However, premiums shall be subject
31 to premium tax.

32 5. *Qualifications of insurer.* An insurer issuing a
33 reimbursement insurance policy under this chapter shall be
34 authorized, registered, or otherwise permitted to transact
35 business in this state and shall meet one of the following

1 requirements:

2 *a.* At the time the policy is filed with the commissioner,
3 and continuously thereafter, the insurer maintains surplus
4 as to policyholders and paid-in capital of at least fifteen
5 million dollars and annually files copies of the insurer's
6 financial statements, national association of insurance
7 commissioners annual statement, and actuarial certification, if
8 required and filed in the insurer's state of domicile.

9 *b.* At the time the policy is filed with the commissioner and
10 continuously thereafter, the insurer does all of the following:

11 (1) Maintains surplus as to policyholders and paid-in
12 capital of less than fifteen million dollars but at least ten
13 million dollars.

14 (2) Demonstrates to the satisfaction of the commissioner
15 that the insurer maintains a ratio of net written premiums,
16 wherever written, to surplus as to policyholders and paid-in
17 capital of not greater than three to one.

18 (3) Files copies annually of the insurer's financial
19 statements, national association of insurance commissioners
20 annual statement, and actuarial certification, if required and
21 filed in the insurer's state of domicile.

22 Sec. 7. Section 523C.7, Code 2019, is amended by striking
23 the section and inserting in lieu thereof the following:

24 **523C.7 Disclosure to service contract holders — contract**
25 **form — required provisions.**

26 1. A motor vehicle service contract or residential service
27 contract shall not be issued, sold, or offered for sale in this
28 state unless the service company does all of the following:

29 *a.* Provides a receipt for the purchase of the service
30 contract to the service contract holder.

31 *b.* Provides a copy of the service contract to the service
32 contract holder within a reasonable period of time after the
33 date of purchase of the service contract.

34 *c.* Provides a complete sample copy of the terms and
35 conditions of the service contract to the service contract

1 holder prior to the date of purchase. A service company may
2 comply with this paragraph by providing the service contract
3 holder with a complete sample copy of the terms or conditions
4 of the service contract, or directing the service contract
5 holder to an internet site containing a complete sample copy of
6 the terms and conditions of the service contract.

7 2. A motor vehicle service contract or residential service
8 contract issued, sold, or offered for sale in this state shall
9 comply with all of the following, as applicable:

10 a. A service contract shall be written in clear,
11 understandable language in at least eight point font.

12 b. (1) A service contract insured by a reimbursement
13 insurance policy as provided in section 523C.5, subsection 1,
14 shall include a statement in substantially the following form:

15 Obligations of the service company under this service
16 contract are guaranteed under a reimbursement insurance policy.
17 If the service company fails to pay or provide service on a
18 claim within sixty days after proof of loss has been filed with
19 the service company, the service contract holder is entitled
20 to make a claim directly against the reimbursement insurance
21 policy.

22 (2) A service contract insured by a reimbursement insurance
23 policy shall conspicuously state the name and address of the
24 issuer of the reimbursement insurance policy for that service
25 contract. A claim against a reimbursement insurance policy
26 shall also include a claim for return of the unearned service
27 company fee paid for the service contract.

28 c. A service contract not insured under a reimbursement
29 insurance policy shall contain a statement in substantially the
30 following form:

31 Obligations of the service company under this service
32 contract are backed by the full faith and credit of the service
33 company and are not guaranteed under a reimbursement insurance
34 policy.

35 d. A service contract shall state the name and address of

1 the service company obligated to perform services under the
2 contract, and shall conspicuously identify the service company,
3 any third-party administrator, and the service contract holder
4 to the extent that the name and address of the service contract
5 holder has been furnished. The identities of such parties are
6 not required to be printed on the contract in advance and may
7 be added to the contract at the time of sale.

8 *e.* A service contract shall clearly state the total purchase
9 price of the service contract and the terms under which the
10 service contract is sold. The total purchase price is not
11 required to be printed on the contract in advance and may be
12 added to the contract at the time of sale.

13 *f.* If prior approval of repair work is required, a service
14 contract shall conspicuously describe the procedure for
15 obtaining prior approval and for making a claim, including a
16 toll-free telephone number for claim service, and the procedure
17 for obtaining emergency repairs performed outside of normal
18 business hours.

19 *g.* A service contract shall clearly state the existence of
20 any deductible amount.

21 *h.* A service contract shall specify the merchandise
22 or services, or both, to be provided and any limitations,
23 exceptions, or exclusions.

24 *i.* A service contract shall clearly state the conditions on
25 which the use of substitute parts or services will be allowed.
26 Such conditions shall comply with applicable state and federal
27 laws.

28 *j.* A service contract shall clearly state any terms,
29 restrictions, or conditions governing the transferability of
30 the service contract.

31 *k.* A service contract shall clearly state the terms and
32 conditions governing the cancellation of the contract prior
33 to the termination or expiration date of the contract by the
34 service company or the service contract holder. If the service
35 company cancels the contract, the service company shall mail a

1 written notice of termination to the service contract holder
2 at least fifteen days before the date of the termination.
3 Prior notice of cancellation by the service company is not
4 required if the reason for cancellation is nonpayment of the
5 purchase price, a material misrepresentation by the service
6 contract holder to the service company or its administrator, or
7 a substantial breach of duties by the service contract holder
8 relating to the covered product or its use. The notice of
9 cancellation shall state the effective date of the cancellation
10 and the reason for the cancellation. If a service contract
11 is canceled by the service company for any reason other than
12 nonpayment of the purchase price, the service company shall
13 refund the service contract holder in an amount equal to one
14 hundred percent of the unearned purchase price paid, less any
15 claims paid. The service company may also charge a reasonable
16 administrative fee in an amount no greater than ten percent of
17 the total purchase price.

18 1. (1) A service contract shall permit the original
19 service contract holder that purchased the contract to cancel
20 and return the service contract within at least twenty days
21 of the date of mailing the service contract to the service
22 contract holder or within at least ten days after delivery of
23 the service contract if the service contract is delivered at
24 the time of sale of the service contract, or within a longer
25 period of time as permitted under the service contract. If no
26 claim has been made under the service contract prior to its
27 return, the service contract is void and the full purchase
28 price of the service contract shall be refunded to the service
29 contract holder. A ten percent penalty shall be added each
30 month to a refund that is not paid to a service contract holder
31 within thirty days of the return of the service contract to the
32 service company.

33 (2) If the service contract holder cancels the service
34 contract outside of the applicable time as provided in
35 subparagraph (1) or after a claim is made under the service

1 contract, the service company shall refund the service
2 contract holder in an amount equal to one hundred percent of
3 the unearned purchase price paid, less any claims paid. The
4 service company may also charge a reasonable administrative fee
5 in an amount no greater than ten percent of the total purchase
6 price.

7 *m.* A service contract shall set forth all of the obligations
8 and duties of the service contract holder, including but not
9 limited to the duty to protect against any further damage,
10 and the obligation to follow an owner's manual or any other
11 required service or maintenance.

12 *n.* A service contract shall clearly state whether or not
13 the contract provides for or excludes consequential damages
14 or preexisting conditions, if applicable. A service contract
15 may, but is not required to, cover damage resulting from rust,
16 corrosion, or damage caused by a part or system which is not
17 covered under the service contract.

18 *o.* A service contract shall clearly state the fee, if any,
19 charged on the service contract holder for making a service
20 call.

21 *p.* A service contract shall state the name and address of
22 the commissioner.

23 Sec. 8. Section 523C.9, Code 2019, is amended to read as
24 follows:

25 **523C.9 Suspension or revocation of license.**

26 ~~1. In addition to the license revocation provisions of~~
27 ~~section 523C.5, the~~ The commissioner may suspend or revoke or
28 refuse to renew the license of a service company for any of the
29 following grounds:

30 ~~a.~~ 1. The service company violated a lawful order of the
31 commissioner or any provision of this chapter.

32 ~~b.~~ 2. The service company failed to pay any final judgment
33 rendered against it in this state within sixty days after the
34 judgment became final.

35 ~~c.~~ 3. The service company has without just cause refused

1 to perform or negligently or incompetently performed services
2 required to be performed under its ~~residential~~ service
3 contracts and the refusal, or negligent or incompetent
4 performance has occurred with such frequency, as the
5 commissioner determines, as to indicate the general business
6 practices of the service company.

7 ~~d.~~ 4. The service company violated [section 523C.13](#).

8 ~~e.~~ 5. The service company failed to ~~maintain the net worth~~
9 ~~required by [section 523C.6](#) demonstrate financial responsibility~~
10 ~~pursuant to section 523C.5.~~

11 ~~f.~~ ~~The service company failed to maintain the reserve~~
12 ~~account required by [section 523C.11](#).~~

13 ~~g.~~ 6. The service company failed to maintain its corporate
14 certificate of good standing with the secretary of state.

15 2. ~~If the license of a service company is terminated~~
16 ~~under [section 523C.5](#) because of failure to maintain bond, the~~
17 ~~commissioner shall give written notice of termination to the~~
18 ~~service company. The notice shall include the effective date~~
19 ~~of the termination.~~

20 Sec. 9. Section 523C.12, Code 2019, is amended to read as
21 follows:

22 **523C.12 Optional examination.**

23 The commissioner or a designee of the commissioner may
24 make an examination of the books and records of a service
25 company, including copies of contracts and records of claims
26 and expenditures, and verify its assets, liabilities, and
27 reserves. The actual costs of the examination shall be borne
28 by the service company. The costs of an examination under this
29 section shall not exceed an amount equal to ten percent of the
30 service company's reported net income in the previous fiscal
31 year.

32 Sec. 10. Section 523C.13, Code 2019, is amended to read as
33 follows:

34 **523C.13 Prohibited acts or practices — penalty.**

35 1. A licensed service company which offers motor

1 vehicle service contracts for sale in this state, or its
2 representative, shall not, directly or indirectly, represent in
3 any manner, whether by written solicitation or telemarketing, a
4 false, deceptive, or misleading statement with respect to any
5 of the following:

6 a. Statements regarding the service company's affiliation
7 with a motor vehicle manufacturer or importer.

8 b. Statements regarding the validity or expiration of a
9 warranty.

10 c. Statements regarding a motor vehicle service contract
11 holder's coverage under a motor vehicle service contract,
12 including statements suggesting that the service contract
13 holder must purchase a new service contract in order to
14 maintain coverage under the existing service contract or
15 warranty.

16 2. The commissioner shall may adopt rules which regulate
17 motor vehicle service contracts and residential service
18 contracts to prohibit misrepresentation, false advertising,
19 defamation, boycotts, coercion, intimidation, false statements
20 and entries and unfair discrimination or practices. If the
21 commissioner finds that a person has violated the rules adopted
22 under this section, the commissioner may order any or all of
23 the following:

24 ~~1.~~ a. Payment of a civil penalty of not more than one
25 thousand dollars for each and every act or violation, but not
26 to exceed an aggregate of ten thousand dollars, unless the
27 person knew or reasonably should have known the person was in
28 violation of this section, in which case the penalty shall be
29 not more than five thousand dollars for each and every act or
30 violation, but not to exceed an aggregate penalty of fifty
31 thousand dollars in any one six-month period. The commissioner
32 shall, if it finds the violations of this section were
33 directed, encouraged, condoned, ignored, or ratified by the
34 employer of such person, assess such penalty to the employer
35 and not such person. Any civil penalties collected under this

1 subsection shall be deposited as provided in [section 505.7](#).

2 ~~2.~~ b. Suspension or revocation of the license of a person,
3 if the person knew or reasonably should have known the person
4 was in violation of [this section](#).

5 Sec. 11. Section 523C.15, Code 2019, is amended to read as
6 follows:

7 **523C.15 Annual report.**

8 A licensed service company that does not demonstrate
9 financial responsibility by insuring service contracts under a
10 reimbursement insurance policy as provided in section 523C.5,
11 subsection 1, shall file with the commissioner an annual
12 report ~~within ninety days of the close of its fiscal~~ no later
13 than August 31 of each year. The annual report shall be in
14 a form prescribed by the commissioner and contain all of the
15 following:

16 1. A current financial statement including a balance
17 sheet and statement of operations prepared in accordance with
18 generally accepted accounting principles and certified by an
19 independent certified public accountant.

20 ~~2. The number of residential service contracts issued~~
21 ~~during the preceding fiscal year, the number canceled or~~
22 ~~expired during the year, the number in effect at year end and~~
23 ~~the amount of residential service contract fees received.~~

24 ~~3.~~ 2. Any other information relating to the performance and
25 solvency of the ~~residential~~ service company required by the
26 commissioner.

27 Sec. 12. Section 523C.16, Code 2019, is amended to read as
28 follows:

29 **523C.16 Exclusions.**

30 This chapter does not apply to any of the following:

31 1. A performance guarantee given by a builder of a residence
32 or the manufacturer or seller or lessor of residential property
33 if no identifiable charge is made for the guarantee.

34 2. A residential service contract, guarantee or warranty
35 between a residential customer and a service company which will

1 perform the work itself and not through subcontractors for
2 the service, repair or replacement of residential property,
3 appliances, or electrical, plumbing, heating, cooling or
4 air-conditioning systems.

5 3. A contract between a service company issuing residential
6 service contracts and a person who actually performs the
7 maintenance, repairs, or replacements of structural components,
8 or appliances, or electrical, plumbing, heating, cooling, or
9 air-conditioning systems, if someone other than the service
10 company actually performs these functions.

11 4. A residential service contract, guarantee or warranty
12 issued by a retail merchant to a retail customer, guaranteeing
13 or warranting the repair, service or replacement of appliances
14 or electrical, plumbing, heating, cooling or air-conditioning
15 systems sold by said retail merchant.

16 5. A residential service contract, guarantee, or warranty
17 issued by a manufacturer, third party, or retail company,
18 covering the repair, maintenance, or replacement of residential
19 property, individual appliances, and other individual items
20 of merchandise marketed and sold by a retail company, in the
21 ordinary course of business.

22 6. A motor vehicle service contract issued by the
23 manufacturer or importer of the motor vehicle covered by
24 the service contract or to any third party acting in an
25 administrative capacity on the manufacturer's behalf in
26 connection with that service contract.

27 7. A residential service contract involving residential
28 property containing more than four dwelling units.

29 8. A warranty.

30 9. A motor vehicle service contract issued, offered for
31 sale, or sold to any person other than a consumer.

32 10. A maintenance agreement.

33 Sec. 13. Section 523C.17, Code 2019, is amended to read as
34 follows:

35 **523C.17 Lending institutions, ~~service companies,~~ and**

1 ~~insurance companies.~~

2 A bank, savings association, insurance company, or other
3 lending institution shall not require the purchase of a motor
4 vehicle service contract or residential service contract as a
5 condition of a loan or the sale of any property. ~~A service~~
6 ~~company or an insurer, either directly or indirectly, as a~~
7 ~~part of any real property transaction in which a residential~~
8 ~~service contract will be issued, purchased, or acquired, shall~~
9 ~~not require that a residential service contract be issued,~~
10 ~~purchased, or acquired in conjunction with or as a condition~~
11 ~~precedent to the issuance, purchase, or acquisition, by any~~
12 ~~person, of a policy of insurance. A lending institution shall~~
13 ~~not sell a residential service contract to a borrower unless~~
14 ~~the borrower signs an affidavit acknowledging that the purchase~~
15 ~~is not required. Violation of this section is punishable as~~
16 provided in [section 523C.13](#).

17 Sec. 14. Section 523C.22, Code 2019, is amended to read as
18 follows:

19 **523C.22 Claim procedures.**

20 A licensed service company shall promptly provide a written
21 explanation to the ~~residential customer~~ service contract
22 holder, describing the reasons for denying a claim or for the
23 offer of a compromise settlement, based on all relevant facts
24 or legal requirements and referring to applicable provisions of
25 the ~~residential~~ service contract.

26 Sec. 15. NEW SECTION. **523C.24 Service company oversight**
27 **fund.**

28 1. A service company oversight fund is created in the
29 state treasury as a separate fund under the control of the
30 commissioner. The fund shall consist of all moneys deposited
31 in the fund pursuant to subsection 2.

32 2. The commissioner shall deposit in the service company
33 oversight fund an amount equal to one-third of all licensing,
34 examination, renewal, and inspection fees collected under this
35 chapter, provided that the maximum amount of fees deposited

1 in the fund each fiscal year shall not exceed five hundred
2 thousand dollars. Any remaining fees collected under this
3 chapter and not deposited in the service company oversight fund
4 shall be deposited as provided in section 505.7.

5 3. Moneys in the service company oversight fund are
6 appropriated to the commissioner for the administration and
7 enforcement of this chapter, and for establishing service
8 contract consumer complaint, education, and outreach programs.

9 4. Notwithstanding section 12C.7, subsection 2, interest or
10 earnings on moneys deposited in the service company oversight
11 fund shall be credited to the fund. Notwithstanding section
12 8.33, moneys credited to the fund shall not revert at the close
13 of a fiscal year.

14 Sec. 16. REPEAL. Chapter 516E, Code 2019, is repealed.

15 Sec. 17. REPEAL. Sections 523C.8, 523C.8A, 523C.11,
16 523C.14, and 523C.18, Code 2019, are repealed.

17 Sec. 18. EMERGENCY RULES. The commissioner of insurance
18 may adopt emergency rules under section 17A.4, subsection 3,
19 and section 17A.5, subsection 2, paragraph "b", to implement
20 the provisions of this Act and the rules shall be effective
21 immediately upon filing unless a later date is specified in the
22 rules. Any rules adopted in accordance with this section shall
23 also be published as a notice of intended action as provided
24 in section 17A.4.

25 Sec. 19. EFFECTIVE DATE. This Act, being deemed of
26 immediate importance, takes effect upon enactment.

27

EXPLANATION

28 The inclusion of this explanation does not constitute agreement with
29 the explanation's substance by the members of the general assembly.

30 This bill modifies provisions applicable to certain service
31 contract providers regulated by the commissioner of insurance.

32 Current Code chapter 516E requires service contract
33 providers, or service companies, that offer motor vehicle
34 service contracts for sale in Iowa to register annually
35 with the commissioner, whereas service companies that offer

1 residential service contracts must become licensed annually by
2 the commissioner under Code chapter 523C.

3 The bill repeals Code chapter 516E, incorporates certain
4 provisions regarding service companies offering motor vehicle
5 service contracts in Code chapter 523C, thereby requiring any
6 service company that sells motor vehicle service contracts
7 or residential service contracts in Iowa to obtain an annual
8 license from the commissioner under Code chapter 523C, and
9 makes other changes to provisions in Code chapter 523C.

10 The bill makes several changes to the definitions in Code
11 section 523C.1. The bill removes definitions for "custodial
12 account", "custodial agreement", "custodian", "depository",
13 and "reserve account agreement". The bill adds definitions
14 for "maintenance agreement", "motor vehicle", "motor vehicle
15 manufacturer", "motor vehicle service contract", "premium",
16 "reimbursement insurance policy", "service contract", and
17 "warranty", and modifies existing definitions for "residential
18 service contract" and "service contract", as described in the
19 bill.

20 The bill provides that a person shall not issue, offer for
21 sale, or sell a motor vehicle service contract or residential
22 service contract in Iowa unless the person is licensed as
23 a service company under Code chapter 523C. The licensure
24 requirements do not apply to any person who provides support
25 services or works under the direction of a licensed service
26 company, including but not limited to a person who provides
27 marketing, administrative, or technical support.

28 The bill specifies the information required in an
29 application for a license under Code chapter 523C. In addition
30 to such information, an application shall be accompanied
31 by a license fee of \$500 and a fee of \$50 for each motor
32 vehicle service contract form submitted in an application,
33 if applicable. The commissioner shall issue a license if
34 an application contains the required information and is
35 accompanied by the required fees.

1 The bill provides that each license issued under Code
2 chapter 523C shall be valid for a period of one year and shall
3 be renewed by August 31 of each year following the date of
4 issuance. An application for renewal shall require the same
5 information required in an initial application, a \$500 license
6 renewal fee, other fees described in the bill that apply to
7 certain service companies, and other information described in
8 the bill regarding a service company's operations during the
9 preceding fiscal year. In addition to such requirements, a
10 service company must report to the commissioner any material
11 change in information provided in the initial application which
12 has not been reported to the commissioner.

13 The bill replaces Code section 523C.5, which provides a
14 surety bond requirement, with a new Code section which requires
15 a service company to demonstrate financial responsibility to
16 the commissioner. The service company shall satisfy this
17 requirement by either insuring all of its service contracts
18 offered for sale in Iowa under a reimbursement insurance
19 policy that complies with the bill, maintaining a funded
20 reserve account and placing in trust with the commissioner a
21 financial security deposit, or maintaining a minimum net worth
22 or stockholders' equity and providing certain information to
23 the commissioner upon request, as described in the bill.

24 The bill replaces Code section 523C.6, which provides a net
25 worth requirement, with a new Code section which establishes
26 certain requirements for reimbursement insurance policies
27 that insure service contracts offered for sale in Iowa. The
28 requirements include provisions regarding insurer obligations,
29 service contract holder rights, termination, indemnification
30 or subrogation, insurance premium tax liability, and insurer
31 qualifications, as described in the bill.

32 The bill replaces Code section 523C.7, which provides
33 service contract filing and form requirements, with a new
34 Code section which establishes certain requirements regarding
35 disclosure to service contract holders, service contract forms,

1 and provisions included in service contracts, as described in
2 the bill.

3 The bill provides that the commissioner may suspend or
4 revoke or refuse to renew the license of a service company if
5 the service company violates a lawful order of the commissioner
6 or any provision of Code chapter 523C, fails to pay a final
7 judgment in Iowa within 60 days, indicates negligence,
8 incompetence, or a refusal to perform services, performs any
9 prohibited acts or practices described in the bill, fails to
10 demonstrate financial responsibility as provided in the bill,
11 or fails to maintain its corporate certificate of good standing
12 with the secretary of state.

13 The bill provides that the costs of a service company
14 examination conducted at the discretion of the commissioner,
15 which is paid by the service company, shall not exceed an
16 amount equal to 10 percent of the service company's reported
17 net income in the previous fiscal year.

18 The bill prohibits a licensed service company offering
19 for sale in Iowa motor vehicle service contracts, or its
20 representatives, from directly or indirectly representing a
21 false, deceptive, or misleading statement with respect to
22 certain statements regarding its affiliation with a motor
23 vehicle manufacturer or importer, the validity or expiration
24 of a warranty, or a service contract holder's coverage
25 under a service contract, as described in the bill. The
26 bill also allows the commissioner to adopt rules regulating
27 service contract practices, any violation of which allows the
28 commissioner to assess certain civil penalties or suspend or
29 revoke a license, as described in the bill.

30 The bill provides that annual reporting requirements
31 shall apply only to licensed service companies which do not
32 demonstrate financial responsibility by insuring their service
33 contracts under a reimbursement insurance policy. The annual
34 report shall be filed with the commissioner no later than
35 August 31 of each year and shall contain certain information

1 described in the bill.

2 The bill excludes from regulation under Code chapter 523C,
3 in addition to residential service contracts currently excluded
4 under Code section 523C.16, certain motor vehicle service
5 contracts currently excluded from regulation under Code chapter
6 516E, residential service contracts involving residential
7 property containing more than four dwelling units, warranties,
8 motor vehicle service contracts issued or sold to any person
9 other than a consumer, and maintenance agreements.

10 The bill prohibits a lending institution from requiring the
11 purchase of a motor vehicle service contract or residential
12 service contract as a condition of a loan or the sale of
13 any property. A violation of this provision allows the
14 commissioner to assess certain civil penalties or suspend or
15 revoke a license, as described in the bill.

16 The bill establishes new Code section 523C.24, which
17 creates a service company oversight fund under the control
18 of the commissioner. The fund shall consist of all moneys
19 deposited in the fund pursuant to the bill. The bill directs
20 the commissioner to deposit in the fund an amount equal
21 to one-third of all licensing, examination, renewal, and
22 inspection fees collected under Code chapter 523C, provided
23 that the maximum amount deposited each fiscal year shall
24 not exceed \$500,000. Any remaining fees collected and not
25 deposited in the fund shall be deposited in the department
26 of commerce revolving fund, pursuant to Code section
27 505.7. Moneys in the oversight fund are appropriated to the
28 commissioner for the administration and enforcement of Code
29 chapter 523C, and for establishing service contract consumer
30 complaint, education, and outreach programs. Interest or
31 earnings on moneys deposited in the fund shall be credited to
32 the fund. Moneys deposited in the fund shall not revert at the
33 close of a fiscal year.

34 In addition to repealing Code chapter 516E, the bill
35 repeals the following Code sections: 523C.8 (provisions

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1 regarding rebates and commissions), 523C.8A (prohibition
2 against the issuance of residential service contracts without
3 consideration), 523C.11 (reserve account requirements), 523C.14
4 (provisions regarding rate review), and 523C.18 (criminal
5 penalty no longer applicable). The bill makes conforming
6 changes throughout Code chapter 523C.

7 The bill allows the commissioner to adopt emergency rules
8 to implement the provisions of the bill. Any such rules shall
9 be effective immediately upon filing unless a later date is
10 specified and shall be published as a notice of intended
11 action.

12 The bill takes effect upon enactment.